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OCT 19 2004

In re Application of
Mika Lahtinen et al.
Application No. 10/693,905
Filed: October 28, 2003
Attorney Docket No. 010315-210

OFFICE OF PETITIONS

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This decision is in response to the petition filed September 2, 2004, under 37 CFR 1.47(a), in response to the Notice to File Missing Parts "Notice" mailed June 1, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on October 28, 2003, naming Mika Lahtinen, Mikko Laukkanen, Sepo Yla-Herttuala and Ollie-Pekka Leppanen but the oath or declaration submitted was unexecuted. Accordingly, on June 1, 2004, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on September 2, 2004, the present petition was filed with a request for a one month extension of time and the oath and declaration signed only by inventors Laukkanen, Yla-Herttuala and Leppanen. Petitioners seek status under 37 CFR 1.47(a) based on the fact that efforts to have inventor Lahtinen execute the declaration have been unsuccessful. Petitioners have shown that correspondences were mailed to the non-signing inventor via UPS but that attempt to have him sign the declaration has not resulted in his compliance with the request.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers

(specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The present petition lacks item (1).

Petitioner has provided a copy of the UPS Waybill used to forward correspondence to Mr. Lahtinen. On the Waybill the contents of the package sent to Mr. Lahtinen is identified as "Power of Attorney". Additionally, the letter purportedly addressed to Mika Lahtinen with a date of August 20, 2004, is in a language other than English. Since the Waybill only identifies the contents as including a "Power of Attorney" and since no English translation has been provided, it is impossible for the USPTO to determine the contents of the package or the letter. The reader would need to know that with the letter a complete copy of the application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor. See Manual of Patent Examining Procedure, Section 409.03(d).

The proof submitted is not sufficient proof that a copy of the application papers were presented to the inventor, in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made.

As indicated, the letter addressed to the non-signing inventor is in a language other than English but the Declaration provided is in English. If it is that Mr. Lahtinen understands English, the application should be presented to him in English or else the USPTO won't be able to determine if in fact the papers presented are in fact what petitioner alleges them to be.

As well, petitioner should be reminded of the provisions of 37 CFR 1.69, which provide that:

(a) Whenever an individual making an oath or declaration cannot understand English, the oath or declaration must be in a language that such individual can understand and shall state that such individual understands the content of any documents to which the oath or declaration relates.

(b) Unless the text of any oath or declaration in a language other than English is a form provided or approved by the Patent and Trademark Office, it must be

accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

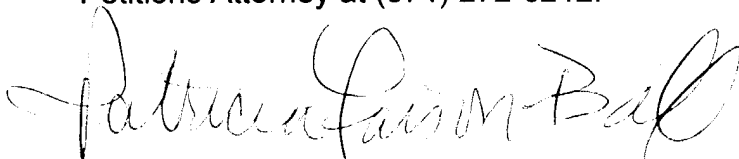
Petitioners have not provided sufficient proof that Mr. Lahtinen had the benefit of seeing the application. Before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions